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June 17, 1996

Dawn Ordrowski, Esquire
Federal Election Commission
Office of the General Counsel
999 E Street, N.W.
Room 657
Washington, D.C. 20463

Re: MUR 3774
National Right to Life
Committee, Inc.

Dear Ms. Ordrowski:

This letter is in response to your oral request, as counsel for the Federal Election Commission, that David N. O'Steen, Ph.D., Executive Director of National Right to Life Committee, Inc. (NRLC), provide copies of Schedule 1 (also known as Statement 11), Form 990, for the years 1992 and 1994 pursuant to the FEC's discovery request in the above-referenced matter. Schedule 1 is an attachment to IRS Form 990 (Return of Organization Exempt from Income Tax) which lists the names of persons making contributions of \$5,000.00 or more, as well as the amounts and dates of such contributions.

Dr. O'Steen and NRLC object to the FEC's request for Schedule 1 on two grounds: (a) the information it contains is not relevant to any issue in the matter; and (b) NRLC has a First Amendment privilege against disclosure of the identities of its contributors.

The gravamen of MUR 3774 - insofar as it relates to NRLC - is that NRLC received payments from the National Republican Senatorial Committee (NRSC) and that it made payments to various organizations in 1992 and 1994. However, the identities of NRLC's contributors of \$5,000.00 or more are irrelevant to such issues, especially in view of the fact that NRLC has admitted that it accepted payments from NRSC, and, as set forth in greater detail below, has provided extensive documentation concerning such payments.

NRLC also objects to the request for Schedule 1 based on its immunity under *NAACP v. Alabama*, 357 U.S. 449 (1958). In that case, the Supreme Court held that an order compelling the NAACP to provide the names and addresses of all members and agents amounted a denial of due process in that it entailed a substantial restraint upon members' exercise of their First Amendment freedom of

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association. The District Court for the District of Columbia characterized NAACP and its progeny as holding "that, absent a compelling governmental interest, an organization could not constitutionally be compelled to identify the names of its members, agents, contributors, or recipients of contributions if it could be demonstrated that such disclosure would subject those identified to harassment or retaliation by virtue of their association." *United States v. Garde*, 673 F.Supp. 604 (D.D.C. 1987). Applying that rule, the Court refused to enforce a subpoena of the Nuclear Regulatory Commission which sought to compel an attorney for a nonprofit whistleblower organization to disclose, *inter alia*, the identities of her clients. *Id.*

Under NAACP, the federal judiciary have developed rules for deciding whether an organization must disclose the identities of its members pursuant to an agency's subpoena. Those rules provide that, if the organization from which the information is sought makes a showing that "enforcement of the subpoenas will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or 'chilling' of, the members' associational rights," the burden shifts to the government to show that the information sought is "rationally related to a compelling governmental interest" and that the "government's disclosure requirements are the 'least restrictive means' of obtaining the desired information." *Brock v. Local 375, Plumbers International Union of America*, 860 F.2d 346, 350 (9th Cir. 1988); accord, *Dole v. Service Employees Union*, 950 F.2d 1456, 1459-61 (9th Cir. 1991). Whether the government's disclosure requirement constitutes the "least restrictive means" depends upon "whether the administrative subpoena will effectuate the [government agency's] compelling interest with no greater restriction on the First Amendment rights of the [organization] and its members than necessary." *Id.* (emphasis added). The "burden of demonstrating a lack of alternative means is on the government. . . ." *Garde, supra*, 673 F.Supp. at 607. The focus of the least restrictive means test is "whether alternative means of obtaining the information sought" are available to the government agency. *Id.*

Under the above rules, NRLC is not required to disclose the identity of its contributors for the following reasons:

First, contributors to NRLC have been subject to intimidation, harassment and economic boycotts when the fact that they contributed to NRLC has become known. Such intimidation unquestionably has a chilling effect on both current and prospective contributors to NRLC. Indeed, several such contributors have specifically requested that their donations remain confidential because of their fear of harassment.

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Second, the FEC cannot carry its burden of demonstrating any interest in the information sought which is even remotely "compelling," nor has the FEC attempted, in communications with NRLC's counsel, to set forth any such compelling interest.

Third, even if there were a *compelling interest*, the FEC's discovery request clearly does not constitute the "least restrictive means" of obtaining information, because it requests the identities of all contributors of over five thousand dollars for two separate taxable years. Such a broad request is clearly calculated to result in a significant burden on the First Amendment associational freedom of NRLC's current and prospective contributors and, if NRLC were to comply, it would have a detrimental effect on NRLC's fundraising efforts as well.

Indeed, not only do "less restrictive means" for obtaining the desired information exist, the FEC has *already employed other means to obtain all relevant information pertaining to contributions to NRLC*. As noted above, NRLC has admitted to receiving payments from NRSC and has provided extensive documentation of those payments. That documentation includes complete tax returns for the relevant years (excluding only Schedule 1), cancelled checks, bank statements, letters and other documents which were provided to the FEC as exhibits to Dr. O'Steen's affidavits. Because those documents and admissions contain all of the relevant facts concerning contributions by the NRSC to NRLC during the years in question, your request for Schedule 1 is superfluous. Therefore, the FEC's discovery request is also objectionable because it is cumulative and duplicative. The FEC should not attempt to seek secondary evidence in discovery when the primary evidence, completely setting forth the details of the transactions in question, is already in its possession. This is especially true where the evidence sought places such a severe burden on First Amendment associational freedoms.

For the foregoing reasons, the National Right to Life Committee, Inc. respectfully objects to the FEC's request and declines to produce copies of Schedule 1.

Sincerely,

BOPP, COLESON & BOSTROM


James Bopp, Jr.

The Secretary of State of Texas

Ron Kirk

Races with Candidates with Addresses Report

1993 Special Election

May 1, 1993

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Aug 29 1 01

Race Name	Occupation	Date of Birth	Phone	Address
U.S. Senator, Unexpired Term - Unexpired Term (M)				
Joe Barton	REP US Representative	09/15/1949	214-875-8688	P.O. Box 1444 Ennis, TX 75120
Billy Brown	REP Retired	02/23/1915	210-797-3099	R.#1, Box 216-J Santa Rosa, TX 75933
Louis C. Davis	REP Honest Lawyer	06/24/1924	409-885-4843	724 Eagle Lake Rd. Sealy, TX 77474
Rick Draheim	REP Auditor	04/21/1958	214-771-8717	275 Henry M. Chandler Rockwall, TX 75087
Jack Fields	REP U.S. Rep	02/03/1952	713-446-9500	P.O. Box 2828 Humble, TX 77347
Richard Fisher	REP Investor	03/18/1949	214-978-6677	700 TCB Tower, 2200 Ross Ave Dallas, TX 75201
Rose Floyd	REP machinist	11/12/1958	713-522-8054	4806 Alameda Houston, TX 77004
Jose Angel Gutierrez	REP Lawyer	10/25/1944	214-941-1900	23A W. 12th Dallas, TX 75208
Lottie Bolling Hancock	REP retired	03/10/1917	512-926-1445	2807 Vernon Ave. Austin, TX 78723
Roger Henson	REP engineer	07/02/1948	214-437-1144	1111 International Parkway Ste 113 Richardson, TX 75
Stephen Hopkins	REP Businessman	08/05/1961	512-756-8337	Box 777 Burnet, TX 78611
Charles Ben Howell	REP Senior Judge	08/14/1925	214-526-8749	Box 140940 Dallas, TX 75214
Kay Bailey Hutchison	REP State Treasurer	07/22/1943	512-463-5935	800 Brazos, Suite 1200 Austin, TX 78701
Gene Kelly	REP Attorney	04/02/1926	210-658-7204	P.O. Box 2722 Universal City, TX 78148
Robert (Bob) Krueger - Incumbent	REP U.S. Senator	09/19/1935	202-224-9763	P.O. Box 311717 New Braunfels, TX 78131-1717
C. (Sonny) Payne	REP Restauranteer	02/02/1948	713-471-6513	7 Earllham Friendswood, TX 77546
Don Richardson	REP Programmer	12/30/1928	713-541-1967	P.O. Box 742364 Houston, TX 77274-2364
Chuck Sibley	REP economist	11/20/1942	214-388-7222	6923 Deloache Dallas, TX 75225
Thomas D. Spink	REP Insurance	06/07/1938	214-416-3057	1403 E. Union Bower Irving, TX 75061
Herbert Spiro	REP Retired Ambassador	09/07/1924	512-472-4103	40 IH35 North, Apt 4B3 Austin, TX 78701
Maco Stewart	REP oil, real estate	03/20/1931	800-437-1777	1400 Hermann Houston, TX 77004
James Vallaster	REP construction worker	08/05/1946	817-573-8549	2943 Oak Ct. Granbury, TX 76048
Clymer Wright	REP Self-employed	07/24/1932	713-780-4422	P.O. Box 572441 Houston, TX 77257
Lou Zaeske	REP Businessman	12/17/1941	409-822-0682	3717 Valley Oaks Drive Bryan, TX 77802

Total Races = 1

1993 SPECIAL ELECTION
MAY 1, 1993
CANDIDATES FILING DATES

MUR 3774

<u>CANDIDATES</u>	<u>FILING DATE</u>
Joe Barton	3/30/93
Billy Brown	3/31/93
Louis C. Davis	1/29/93
Rick Draheim	3/29/93
Jack Fields	2/4/93
Richard Fisher	2/12/93
Rose Floyd	3/31/93
Jose Angel Gutierrez	3/25/93
Lottie Bolling Hancock	3/18/93
Roger Henson	3/17/93
Stephen Hopkins	1/25/93
Charles Ben Howell	3/31/93
Kay Bailey Hutchison	3/30/93
Gene Kelly	1/26/93
Robert (Bob) Krueger	2/4/93
C. (Sonny) Payne	3/30/93
Don Richardson	2/11/93
Chuck Sibley	3/31/93
Thomas D. Spink	2/24/93
Herbert Spiro	3/9/93
Maco Stewart	3/24/93
James Vallaster	3/24/93
Clymer Wright	3/30/93
Lou Zaeske	3/9/93

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